

Response to Amendment

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-45 are rejected on the ground of nonstatutory double patenting over claims 1-20 of U. S. Patent No. 7321903 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: Both inventions are directed to evaluation programs, distributed content and content rating window. The obvious distinction between the two sets of claims is that instant application is directed to a method for gathering a plurality of evaluations from a plurality of users who evaluate a distributed

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content page using a content rating window whereas the patent claims are directed to program product for storing in a data repository a plurality of evaluations from a plurality of users who evaluate a distributed content page using a content rating window.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4-6 and 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz, U. S. Patent No. 6029195 in view of Fukumoto et al. (Fukumoto), U. S. Patent Application No. 2004/0019677.

Regarding claim 1, Herz discloses a method for gathering a plurality of evaluations from a plurality of users who value a plurality of distributed content pages on a single web site using a content rating window and where each user meets a minimum evaluation criteria (see e.g. Herz, col. 5 lines 6-20 and col. 7 lines 29-40) comprising: performing a first plurality of steps comprising: accepting an access to the single web site by a user; accessing a user evaluation criteria associated with the user (see e.g. Herz, col. 20 lines 23-38); creating a user session to track the access to each of the

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plurality of distributed content pages on the single web site, and for each of the plurality of distributed content pages accessed by the user (see e.g. Herz, col. 65 lines 50-67), performing a second plurality of steps comprising: determining whether a version of a distributed content page accessed by the user is associated with the content rating window, and when the version of the distributed content page accessed by the user is associated with the content rating window, determining whether the user meets the minimum evaluation criteria (see e.g. Herz, col. 18 lines 10-40, col. 68 lines 58-67 and col. 69 lines 1-31); when the user meets the minimum evaluation criteria, using the content rating window to accept a user evaluation of the version of the distributed content page, saving the user evaluation as a user rating, and associating the user rating with the user session, saving the version of the distributed content page, and a user session data (see e.g. Herz, col. 19 lines 29-60); and closing the user session when the user exits the web site; wherein the plurality of distributed content pages on the web site are rated by a user who meets the minimum evaluation criteria (see e.g. Herz, col. 70 lines 39-55); and wherein the minimum evaluation criteria means a group of criteria defining a type of user who may evaluate a distributed content page (see e.g. Herz, col. 72 lines 15-50).

Although Herz discloses the invention substantially as claimed, it does not explicitly disclose installing an evaluation program on a computer.

Fukumoto teaches site evaluation system that evaluates one or more pages. It further teaches installing evaluation program (EP) on a computer. At the time of the invention it would have been obvious to combine the teaching of Fukumoto with that of Herz.

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Motivation for doing so would have been to provide and enable evaluations with less errors and inconsistency (see Fukumoto, paragraph [0008]).

Regarding claim 4, Herz-Fukumoto teaches wherein the evaluation program further performs steps comprising: determining whether the user desires to evaluate the version of the distributed content page, and displaying the content rating window only when the user desires to evaluate the version of the distributed content page (see e.g. Herz, col. 69 lines 45-59 and col. 70 lines 2-18).

Regarding claim 5, Herz-Fukumoto teaches wherein the evaluation program further performs steps comprising: responsive to the determination that the version of the distributed content page is not associated with the content rating window, determining whether the user has accessed a different distributed content page (see e.g. Herz, col. 69 lines 1-31 and col. 70 lines 39-55).

Regarding claim 6, Herz-Fukumoto teaches wherein the evaluation program further performs steps comprising: responsive to the determination that the user does not meet the minimum evaluation criteria for the content rating window, determining whether the user has accessed the different distributed content page (see e.g. Herz, col. 70 lines 39-55).

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5. Claims 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz, U. S. Patent No. 6029195 in view of Fukumoto et al. (Fukumoto), U. S. Patent Application No. 2004/0019677 and further in view of Shen et al. (Shen), U. S. Patent No. 2004/0204983.

Although Herz-Fukumoto disclose the invention substantially as claimed, they do not disclose wherein the user is offered an incentive for evaluating one or more of the plurality of distributed content pages.

Shen teaches method of evaluation websites by a user wherein a user is given an incentive for evaluating and providing a feedback (see e.g. Shen, paragraph [0091]). At the time of the invention it would have been obvious to a person of ordinary skill in the art to combine the teachings of Shen with that of Herz-Fukumoto. Motivation for doing so would have been to entice users to participate in evaluations of performance and effectiveness of website advertisements.

Regarding claim 11, Herz-Fukumoto-Shen teaches wherein the incentive is gifts, points, or miles (s) (see e.g. Shen, paragraph [0091]). The same motivation utilized in the combination of claim 10, equally applies as well to claim 11.

Regarding claim 12, Herz-Fukumoto-Shen teaches wherein the incentive is tracked in the user rating (see e.g. paragraphs [0017] and [0091]).

Regarding claim 13, Herz-Fukumoto-Shen teaches wherein the user saves the user

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rating in a memory and completes the user rating at a later date (see e.g. Herz, col. 75 lines 64-67 and col. 76 lines 1-9).

Regarding claim 14, Herz-Fukumoto-Shen teaches wherein the user rating may be categorized by any of the fields in the user session or the user rating (see e.g. Herz, col. 5 lines 6-20).

Regarding claim 15, Herz-Fukumoto-Shen teaches wherein the user completes the user rating by email, web browser, or telephone (see e.g. Herz, col. 6 lines 16-38).

Regarding claim 16, Herz-Fukumoto-Shen teaches wherein the user rating gathers evaluative information from the user based on the user's complete navigation of the plurality of the distributed content pages (see e.g. Herz, col. 65 lines 50-67).

Regarding claim 17, Herz-Fukumoto-Shen teaches wherein the user rating allows the user to evaluate the plurality of the distributed content pages (see e.g. Herz, col. 66 lines 2-27).

Regarding claim 18, Herz-Fukumoto-Shen teaches wherein the user reviews the distributed content page simultaneous with reviewing the content rating window (see e.g. Herz, col. 69 lines 45-59 and col. 70 lines 2-18).

Regarding claim 19, Herz-Fukumoto-Shen teaches wherein distributed content administrator can distinguish between an accidental distributed content page request and an intentional distributed content page request by analyzing a duration data in the user session (see e.g. Herz, col. 78 lines 31-61).

Regarding claim 20, Herz-Fukumoto-Shen teaches wherein the distributed content page is a webpage (see e.g. Herz, col. 67 lines 30-46).

Regarding claim 21, Herz-Fukumoto-Shen teaches wherein the distributed content page is displayed on a portable electronic device (see e.g. Herz, col. 9 lines 37-39).

Response to Arguments

6. Applicant's arguments with respect to claims 1, 4-6, and 10-21 have been considered but are moot in view of the new ground(s) of rejection.

Applicant employs broad language, which includes the use of word, and phrases, which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly as reasonable possible, in determining patentability of the disclosed invention. Although the claims are

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interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993).

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly define the claimed invention.

Prior Art of Record

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please refer to form PTO-892 (Notice of Reference Cited) for a list of relevant prior art.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MOHAMED IBRAHIM whose telephone number is (571)270-1132. The examiner can normally be reached on Monday through Friday from 7:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William C. Vaughn, Jr. can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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